

EXHIBIT 1

December 11, 2002

Via Electronic Filing

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in CC Docket No. 01-338; CC Docket No. 96-98; and CC Docket No. 98-147

Dear Ms. Dortch:

There are a number of reasons why entrants are impaired without access to unbundled local switching, particularly those entrants seeking to provide analog telephone services to residential and small business customers. On October 31, 2002, the Competitive Telecommunications Association ("CompTel") and the Promoting Active Competition Everywhere ("PACE") Coalition wrote you to describe in detail the problems caused by one such impairment, the manual hot-cut process.¹ In this letter, the undersigned carriers and associations explain the fundamental impairment created by the geographic dispersion of mass market residential and small business customers, and the resulting barriers that frustrate the deployment of competitive switching facilities to serve those customers. As explained in more detail below:

- * New entrants can realistically expect to gain a relatively small market share, particularly in the near term. This means that it is only economic to deploy competitive facilities to wire centers that represent large concentrations of local loops where even a relatively small share of the market can result in sufficient scale to justify the deployment of facilities.

¹ Letter from H. Russell Frisby, Jr. (CompTel) and Genevieve Morelli (PACE Coalition) to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147, filed October 31, 2002 ("October 31st Letter").

- * Incumbent local exchange networks were not designed to concentrate loops at a few dense wire centers. Rather, these legacy networks are made up of a large number of relatively small wire centers, dramatically reducing the addressable market for alternative facilities to limited and discrete areas.
- * Mass market competition requires strategies capable of serving *broad* geographic markets, where the size of individual wire centers is not an impediment to entry. Only access to unbundled local switching addresses the impairment caused by the inefficient loop concentration that exists in incumbent networks by providing the necessary footprint for mass market competition.

The Telecommunications Act of 1996 promises entrants access to the inherited scale of the incumbent network with the expectation that such access would create the "...potential for competitive alternatives to flourish rapidly throughout a State..."² Access to unbundled local switching is making this vision a reality because it (and it alone) enables the type of mass market competition that extends competition "rapidly throughout a State" as envisioned by Congress. Until significant barriers that prevent competitive carriers from serving mass market customers are removed, including loop provisioning problems and the geographic dispersion of ILEC loop facilities, the Commission must retain local switching on the national minimum list of network elements to assure that this Congressional vision is sustained.

Mass Market Competition Requires Scale and Ubiquity

The development of competition in the long distance market provides useful lessons for local competition. Long distance competition evolved from a number of key conditions contained in the AT&T divestiture agreement. The most prominent condition (beyond the corporate separation of the local bottleneck from competitive lines-of-business) was the introduction of equal access through the automated primary interexchange carrier ("PIC") change process. As discussed in the October 31st letter, this fully automated process is fast, reliable, reasonably cost-effective, and able to accommodate commercial volumes.

² See Joint Explanatory Statement, page 33, and Memorandum and Order, Federal Communications Commission Docket No. 97-137, ("Michigan Order"), released August 19, 1997, footnote 169.

Less prominent, but equally important, is the fact that incumbent local exchange carriers (“ILECs”) were required to provide network access in a manner that gave *reach* to long distance competitors, enabling them to offer mass market services without deploying broad diffuse networks. By interconnecting at an access tandem, long distance carriers could efficiently serve any subtending end-office – in effect, relying on the traffic aggregation capabilities of the local exchange to create a sufficiently large “addressable market” that even a new entrant expecting a relatively small market share could achieve the necessary scale to compete.³

Significantly, in the local market, neither precondition to competition is satisfied. As noted in the October 31st letter, a threshold condition to mass market local competition -- an economically rational means of customer migration comparable to the PIC-change process in terms of transaction cost, service-continuity, reliability and volume -- does not yet exist.⁴ Implementing such a “loop equal access” regime would address impairments related to the migration of customers to an entrant’s network, but it would not address the scale needed at each end-office to make facilities deployment an economically feasible alternative. The “addressable market” at each wire center is a critical factor affecting the development of local competition that cannot be ignored, for it presents an impairment to mass market competition that will remain even after the “loop equal access” impairment is resolved.

The Incumbent Exchange Network Determines the Addressable Market

It is important to appreciate that potential scale (*i.e.*, the addressable market) is, in large part, beyond the control of a new entrant. First, the consumers and smaller businesses that comprise the mass market are themselves geographically dispersed. There is nothing that *any* regulator can do about where consumers and businesses choose to locate. So long as potential customers prefer to live and work in suburbs and small towns, widespread local competition will depend, at least in part, on access to the incumbent network.

³ Many new entrants, such as MCI and Qwest, eventually built their own long distance networks once they acquired the customer base to justify this investment.

⁴ Moreover, without the appropriate regulatory incentives and/or direction, such a process will never exist.

Second, and more importantly, the addressable market at any end office is largely the product of ILEC network decisions concerning the number and location of its wire centers. The greater the number of wire centers deployed by an ILEC, the less the number of lines served by each wire center and, consequently, the smaller the addressable market at that end office. The smaller the addressable market, the more difficult it becomes for an entrant to achieve the viable scale needed to justify the deployment of facilities at that location.

The “dispersed market dilemma” in the local network is a substantial concern. Table 1 (below) provides a density profile of the incumbent network for a wide cross-section of states by categorizing wire centers according to the number of switched access lines reported at each.⁵ As shown in Table 1, ILEC networks were not designed to maximize the potential addressable market by concentrating a large number of loops into a few wire centers. For instance, there is only one wire center in Georgia with more than 125,000 switched access lines, and no similarly sized wire centers are located in Indiana or North Dakota.

**Table 1: Distribution of Addressable Market
(Switched Access Lines)**

Addressable Market (Switched Lines In Office)	Number of Wire Centers						
	GA	IL	PA	TX	NY	IN	ND
> 125,000	0	2	0	2	6	0	0
100,000 to 125,000	1	6	0	5	10	1	0
75,000 to 100,000	7	14	5	16	22	0	0
50,000 to 75,000	20	27	25	28	40	11	1
25,000 to 50,000	35	48	62	84	64	16	2
10,000 to 25,000	30	55	82	91	71	29	5
5,000 to 10,000	26	21	64	66	68	27	2
<5000	59	102	146	225	237	79	25
Total Wire Centers in State	178	275	384	517	518	163	35

The data in Table 1 offers a number of insights. First, there is wide variation among the states, even among states with large urban populations. Unlike the “migration impairment” discussed in the October 31st letter (which is effectively uniform throughout the nation), the impairment associated with wire center density is state specific. These state-specific differences clearly imply that the states should play a significant role

⁵ Hybrid Cost Proxy Model, Line Count Data and Results from January 20, 2000 posting, available at: <http://www.fcc.gov/wcb/tapd/hcpm/welcome.html>.

determining when CLECs will be impaired without access to unbundled network elements.⁶

Second, an entrant hoping to gain even a 5% market share would find many wire centers too small to justify facilities and collocation costs, even if migration barriers were resolved as we recommend. For instance, a carrier expecting a 5% share of the mass market could reasonably expect to gain 2,500 lines or more (requiring a wire center with at least 50,000 switched access lines) in only at 28 of 178 wire centers in Georgia (15.7%), 51 of 517 wire centers in Texas (9.9%), 30 of 384 wire centers in Pennsylvania (7.8%), and only one (of 35) wire centers in North Dakota. Moreover, these statistics *exaggerate* the addressable mass market, because some of the switched lines in Table 1 are used to serve very large business customers (typically through Centrex arrangements) that are not reasonably part of the “mass market.”

In addition, many entrants have developed and rely on specialized marketing channels, products and customer service targeted to the small business market. For these carriers, the aggregate statistics in Table 1 grossly overstate the addressable market by combining lines used by residential consumers with those of the small business market.⁷ For entrants attempting to compete for small business customers, the loop concentration profile of the incumbent’s network is even more troubling. As shown in Table 2 (below), the loop aggregation profile of the RBOC network for business lines is quite modest, with few end offices having large concentrations of lines.⁸

⁶ The parties to this letter urge the Commission to adopt a meaningful role for the states, as defined in the October 24th letter filed by a number of CLECs and their associations in this docket. Letter from Access Integrated Networks, et al. to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147, filed October 24, 2002.

⁷ Although residential and small business customers frequently desire similar analog phone services, there are significant differences in the marketing channels used to approach each, as well as each market’s emphasis on price, features and customer service. As a result, carriers that are able to successfully compete for residential customers may not be able to compete in the small business market, and vice versa.

⁸ Moreover, the potential market profile shown in Table 2 is exaggerated because the data includes the lines of very large businesses that would not reasonably be addressable by an entrant competing for the smaller business customers who comprise the mass market.

**Table 2: Distribution of the Addressable Market
(Switched Business Lines)**

Addressable Market (Business Lines)	Number of Wire Centers						
	GA	IL	PA	TX	NY	IN	ND
> 125,000	0	1	0	0	1	0	0
100,000 to 125,000	0	0	0	1	0	0	0
75,000 to 100,000	0	0	0	2	5	0	0
50,000 to 75,000	1	3	3	11	6	1	0
25,000 to 50,000	13	30	11	34	21	5	0
10,000 to 25,000	31	58	59	75	83	20	3
5,000 to 10,000	30	40	60	65	50	14	1
<5,000	103	143	251	329	352	123	31
Total Wire Centers	178	275	384	517	518	163	35

As shown in Table 2 – and even including the lines of customers that are *not* potential customers of an entrant oriented to smaller businesses⁹ -- the number of end offices containing a sufficiently large base of business lines to sustain even a 5% market share entrant is very small. For instance, an entrant seeking a 5% market share could expect more than 2,500 lines in only 4 wire centers (out of 275) in Illinois, 3 (out of 384) in Pennsylvania and only one end office each in Georgia and Indiana. The bottom line is that the geographic dispersion of the mass market, coupled with the incumbents' loop concentration choices, seriously limit an entrant's ability to deploy facilities across the broad footprint required to offer mass market services. This is true for entrants seeking to offer mass market services to residential and business customers generally, and even more troubling for entrants that have developed specialized services for the more discerning small business market.

The Consequences of a Dispersed Mass Market

The market barrier presented by the geographic dispersion of the mass market – like the impairment created by the manual hot-cut process – would prevent widespread local competition unless it were overcome. Currently, the principal solution is found with UNE-P. In addition to providing entrants with a reliable, efficient and scalable customer-migration process, UNE-P affords entrants the ability to offer service across a broad footprint, despite the proliferation of ILEC wire centers.

⁹ As noted earlier, the data used in Table 1 and Table 2 exaggerates the potential mass market because it includes switched lines used to serve very large business customers in Centrex-like arrangements that are not reasonably considered part of the mass market.

There is substantial record evidence documenting the use of UNE-P to compete across the full range of geographic conditions.¹⁰ Most recently, SBC released a summary detailing the geographic distribution of UNE-P lines throughout its region. That data (summarized below) demonstrates that UNE-P successfully overcomes the impairment caused by the geographic dispersion of the mass market across a large number of incumbent local exchange carrier wire centers.

**Table 3: The Broad Competitive Benefit of UNE-P
(SBC Region)¹¹**

State	Number of UNE-P Lines in Zone		
	Urban	Suburban	Rural
Arkansas	10,314	38,370	1,549
California	132,200	146,083	2,792
Illinois	12,562	181,991	331,813
Indiana	18,794	2,510	19,722
Kansas	91,698	47,889	5,391
Michigan	140,675	309,067	374,818
Missouri	92,130	32,195	8,101
Ohio	69,433	79,846	129,387
Oklahoma	51,154	7,383	5,396
Texas	447,076	678,015	284,506
Wisconsin	12,436	37,361	14,995
	1,078,472	1,580,710	1,178,470

As noted, mass market customers are not conveniently clustered and easily reachable by competitive networks, nor do entry strategies oriented toward the mass market naturally produce density. If not for the availability of unbundled local switching (and the UNE-P combination that it makes possible), the dispersion of the mass market would exclude competitors from market participation.

First and foremost, entrants would not be able to offer mass market services. Such services are typically designed and marketed to appeal to a broad cross-section of customers and require a large addressable market to be successful. Attempting to offer such services only in a few select wire centers would substantially increase customer

¹⁰ See e.g., Letter from Genevieve Morelli, PACE Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147, filed October 4, 2002.

¹¹ Source: SBC *Ex Parte*, CC Docket Nos. 01-338, 96-98 and 98-147, filed October 30, 2002, page 5.

acquisition costs and effectively foreclose most common advertising media of general circulation.

Second, selective reductions in the addressable market bear consequences larger than the excluded markets themselves. For example, a CLEC might seek to serve a pizza chain with six stores, only three of which are located in a wire center where the CLEC has deployed a switch. Without UNE-P, the CLEC would not be able to serve the three "off network" stores, and as a result, the CLEC would lose the customer's entire account. In addition, the fact that the CLEC would not be able to serve these "off-network" locations would hamper the CLEC's growth into new wire centers, which in turn would chill the deployment of new facilities.

Finally, entrants would be precluded from competing effectively across the full mass market if foreclosed from important wire centers or forced to pursue parallel entry strategies that increase their cost. The incumbent local exchange carriers are able to compete in suburban and rural mass markets because they also offer services in urban areas. Entrants must have a comparable ability if they are to compete as broadly as possible.

Potential Solutions to the Dispersed Market Dilemma

The inherently dispersed nature of the mass market, combined with the loop/wire-center architecture of the incumbent, imposes significant barriers to facilities-based competition in this sector. There are, however, strategies that can be used to extend competitive networks, gaining density where possible, to further promote entry. The most promising of these strategies is the use of loop-transport combinations, commonly referred to as "Enhanced Extended Links" (EELs), to extend the reach of existing switches to serve larger, digital customers in distant end offices under certain conditions.

The EEL configuration is a combination of a loop with dedicated interoffice transport that enables an entrant to "extend" a customer's loop to an end office where the entrant has facilities. More than 40% of the DS-1 UNE loops provisioned by BellSouth in 2002 were part of an EEL combination.¹² Importantly, however, today cost and provisioning impairments effectively limit the application of this technique to larger (i.e., DS-1 or above) digital customers.

¹²

Source: BellSouth Response to WorldCom Item No. 26, Docket P-55, Sub 1022, North Carolina Public Utilities Commission.

Table 4: Additional Monthly Cost of an EEL for Analog Service¹³

	Zone 1	Zone 2	Zone 3
Analog Loop	\$12.24	\$17.40	\$30.87
Fill Factor on DS-1	Additional Cost of EEL per VGE		
0.5	\$20.98	\$20.98	\$20.98
0.7	\$15.38	\$15.38	\$15.38
0.9	\$12.27	\$12.27	\$12.27

As shown in Table 4, EELs substantially increase the effective loop cost to serve a customer because of the additional recurring and non-recurring costs of the DS-1 transport facility used to extend the loop. Depending upon how efficiently the CLEC can “pack” its DS-1 EEL, the additional cost of the transport adds between \$12.27 (90% fill factor) to \$20.98 per line, per month. In addition, the non-recurring charge to establish a DS-1 EEL is \$366.04, a cost increase that renders the EEL arrangement unusable for analog mass market services. Not surprisingly, BellSouth (which at least claims to make EELs available) has not provisioned a single analog-EEL arrangement.¹⁴

An efficient, cost-effective aggregation option for the analog mass market must be found for the traffic density impairment discussed herein to be eliminated. At present, however, the EEL option is not an alternative to UNE-P to serve residential and small business customers, and much work remains to be done in this area before the

¹³ Table 4 details the additional costs (over and above the standard rate for an unbundled loop) that are incurred in an EEL configuration using DS-1 transport. Source: BellSouth Florida UNE rates. Florida was used in the example because it is the most recent state to render a cost order for BellSouth. Obviously, calculations such as the above are state-specific, further underscoring the need for a state-by-state analysis of local market and cost conditions.

¹⁴ In contrast, the voice grade equivalent (“VGE”) increase in cost to serve a DS-1 customer in Florida is between \$4.40/month and \$7.70/month. While not trivial, such cost increases are more manageable in the DS-1 product market where contract terms are common and customer churn is moderate.

Commission (or appropriate state Commission) is able to determine that the "geographic dispersion impairment" no longer exists. Until the time that some solution proves viable, the impairment that results from the geographic dispersion of mass market customers will exist and local switching must remain available as a network element.

Sincerely,

Access Integrated Networks
Association of Communications Enterprises
AT&T
ATX
BiznessOnline.Com, Inc.
BridgeCom
Broadview Networks, Inc.
Competitive Telecommunications Association
Data Net Systems LLC
El Paso Global Networks
Ernest Telecom
InfoHighway Communications
ITC^DeltaCom
LDMI
nii communications
Promoting Active Competition Everywhere Coalition
Remi Communications
Talk America, Inc.
TruComm Corp.
WorldCom
Z-Tel Communications, Inc.

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	Commissioner Copps	Jordan Goldstein
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	Jeremy Miller	